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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,478	10/20/2003	Daniel S. Papenfuss	20717	7892

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EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,478

Applicant(s)

PAPENFUSS ET AL.

Examiner

Marc A Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-67 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/13/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claim 21 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 21 does not further limit Claim 1, from which it depends.
2. Claim 21 objected to because of the following informalities: The meaning of the phrase 'an opposite bottom second seal edge portion in parallel with said bottom second seal edge portion' is unclear, and the phrase appears to be a typographical error. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 – 4, 6 – 13 and 17 – 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Gehrke et al (U.S. Patent No. 5,874,155).

With regard to Claims 1 and 9 – 11, Gehrke et al disclose a flexible multilayer packaging film (flexible packaging laminate; column 2, lines 56 – 64) comprising a film, therefore having an internal surface and external surface comprising a biaxially oriented polymer comprising

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polyamide (biaxially oriented nylon; column 4, lines 5 – 11), comprising a surface – roughened portion (column 5, lines 20 – 24) comprising score lines (cuts; column 4, lines 46 – 49) on its external surface (surface facing up; column 5, lines 7 – 9); the multilayer film comprises multiple layers, therefore three layers, of the film (column 5, lines 41 – 45), and is adhered by adhesive lamination (column 5, lines 52 – 55); the film therefore comprises a first film layer comprising a first biaxially oriented polymer having a surface roughened portion on its external surface, a second film layer comprising adhesive positioned between the second film layer and third film layer, third film layer which is a polyamide, and therefore a barrier layer, and is positioned between the second film layer and fourth film layer, and a fourth film layer having a second biaxially oriented polymer and having an external surface comprising a score line.

With regard to Claims 2 – 3, Gehrke et al discloses no shrinkage; the claimed aspect of 0% shrinkage at 85 degrees Celsius in the machine and transverse directions therefore reads on Gehrke et al.

With regard to Claim 4, as discussed above, the film disclosed by Gehrke et al is adhered by adhesive lamination, and therefore comprises a fifth film layer positioned between the third film layer and fourth film layer which comprises an adhesive.

With regard to Claims 6 – 7, the score lines which are made by Gehrke et al are made by knurling (column 1, lines 61 – 63) and are therefore continuous and non – continuous.

With regard to Claim 8, the claimed aspect of the score line being made by optical ablation is directed to a method limitation and is therefore given little patentable weight.

With regard to Claim 12, the barrier material disclosed by Gehrke et al is a polyamide, which is identical to the claimed barrier material, and therefore has an oxygen transmission rate of $0.01 - 1.00 \text{ cm}^3/100 \text{ in}^2$.

With regard to Claim 13, the film disclosed by Gehrke et al has a vapor transmission rate of 0.24 g/in^2 (column 9, lines 19 – 21).

With regard to Claim 17, Gehrke et al discloses an adhesive that is a cold – seal adhesive (column 3, lines 29 – 31), therefore adhered to any surface of the layers.

With regard to Claims 18 – 19, the layers disclosed by Gehrke et al have internal and external surfaces as discussed above; the first film layer is therefore an outer film layer and the fourth film layer is an inner film layer.

With regard to Claim 20, the film disclosed by Gehrke et al has a thickness of $0.75 - 3.5$ mils (32 guage to 100 guage; column 6, lines 50 – 52).

With regard to Claim 21, the film disclosed by Gehrke et al is oriented as discussed above, and has an easy opening tear feature (column 3, lines 9 – 12) and therefore forms a package comprising a tear initiation area and a directional tear zone; the film also discloses a packaging having a top first edge seal portion and an opposite bottom second edge seal portion in parallel with the top first edge seal portion (column 8, lines 38 – 44; Figure 10) and a third seal portion disposed perpendicular between the top first seal edge portion and bottom second seal edge portion (column 8, lines 38 – 44; Figure 10) and parallel to a folded side edge (the sides are sealed, therefore folded; column 8, lines 33 – 37) and at least one first folded side edge is superimposed on the surface roughened portion on an external surface of the first film layer of the package.

With regard to Claims 22 – 23, Gehrke et al disclose a heat sealant film or cold – seal adhesive (column 3, lines 29 – 31) and therefore disclose a top first seal edge portion and bottom second seal edge portion comprising a heat sealant film or cold – seal adhesive.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gehrke et al (U.S. Patent No. 5,874,155).

Gehrke et al disclose a multilayer film having a fourth layer having a score line as discussed above. Gehrke et al fails to disclose a score line having a depth of from 50 – 95% of the thickness of the layer. However, Gehrke et al teaches the selection of the depth of the score line depending on the desired barrier properties of the film (a perforation, which penetrates the film, is unsuitable because it allows product environment changes, within the film; column 1, lines 42 – 48). Therefore, one of ordinary skill in the art would have recognized the utility of varying the depth of the score line to obtain the desired barrier properties. Therefore, the barrier properties would be readily determined by through routine optimization of the depth of the score line by one having ordinary skill in the art depending on the desired use of the end product as taught by Gehrke et al.

It therefore would be obvious for one of ordinary skill in the art to vary the depth of the score line in order to obtain the desired barrier properties, since the barrier properties would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Gehrke et al.

7. Claims 14 – 16 and 24 – 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gehrke et al (U.S. Patent No. 5,874,155) in view of Gehrke (U.S. Patent No. 5,783,266).

Gehrke et al discloses a multilayer film having a barrier layer comprising polyamide as discussed above. With regard to Claims 14, 24 – 35, 38 – 52, 54 – 59 and 61 – 67, Gehrke et al fail to disclose a barrier layer comprising a metallic coating on the external surface of the fourth film layer having a thickness from 200 – 700 Angstroms.

Gehrke teaches that a metallic coating (thin layer of metal formed by deposition; column 3, lines 27 – 32) is used interchangeably with polyamide (nylon; column 3, lines 27 – 32) as a barrier layer in a film (column 3, lines 27 – 32) for the purpose of obtaining a film that is a barrier to oxygen and moisture (column 3, lines 32 – 35). One of ordinary skill in the art would therefore have recognized the advantage of providing for the metallic coating of Gehrke in Gehrke et al, which comprises a multilayer film, depending on the desired barrier to oxygen and moisture of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a metallic coating on the external surface of the layers in Gehrke et al in order to obtain a film that is a barrier to oxygen and moisture as taught by Gehrke.

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Gehrke fails to disclose a metallic coating having a thickness from 200 – 700 Angstroms. However, Gehrke teaches the selection of the coating depending on the desired strength (column 7, lines 53 – 60). Therefore, one of ordinary skill in the art would have recognized the utility of varying the thickness to obtain the desired strength. Therefore, the strength would be readily determined by through routine optimization of the thickness by one having ordinary skill in the art depending on the desired use of the end product as taught by Gehrke.

It therefore would be obvious for one of ordinary skill in the art to vary the thickness in order to obtain the desired strength, since the strength would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Gehrke.

With regard to Claims 15 – 16, 36 – 37, 53 and 60, Gehrke teaches a metal layer comprising aluminum, which is a metal (column 4, line 65).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marc Patterson 6/27/05
Marc A. Patterson, PhD.
Examiner
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